

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DENISE MARIE DIGGS,
SYLVIA DARISE DIGGS, GLORIA DIANE
DIGGS, and KEVIN LAFAYETTE DIGGS, JR.,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

UNPUBLISHED
September 14, 2004

v

KEVIN DIGGS, SR.,

No. 252612
Wayne Circuit Court
Family Division
LC No. 87-266061

Respondent-Appellant,
and

SHIRLEY ANN DIGGS,

Respondent.

Before: Donofrio, P.J., and White and Talbot, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor children under MCL 712A.19b(3)(g). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1)(b).

The trial court did not clearly err in finding that the statutory ground for termination was established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent-appellant failed to provide proper care and custody of the children by failing to maintain the home in a minimally safe and sanitary condition. The evidence indicated that the home was extremely cluttered, with old food and dirty dishes sitting out, a ceiling that was caving in, and a large hole in the upstairs floor. None of the four children had beds and they slept with respondent-appellant or their grandmother, and sometimes with their mother and her boyfriend. Respondent-appellant further failed to provide proper care for the children by failing to protect them from their mother's cocaine abuse. All four of the children tested positive for cocaine at birth. Finally, respondent-appellant failed to provide proper care and custody for the children by allowing them to have continued contact with their mother despite several agreements not to allow such contact.

The evidence also supports the trial court's conclusion that respondent-appellant would not be able to provide proper care and custody for the children in a reasonable time considering their ages. As the trial court noted, termination might not have been warranted at the initial dispositional hearing if the only problem were the condition of the home, or if this were respondent-appellant's first contact with petitioner. However, the house remained unsafe and unsuitable despite a previous complaint concerning housing, and there were numerous previous instances of FIA involvement. Respondent-appellant demonstrated indifference to the welfare of the children by continuing to maintain a relationship with their mother despite her cocaine addiction. The trial court found respondent-appellant's testimony that he would sever his relationship with the children's mother lacking in credibility in light of the fact that respondent-appellant had repeatedly agreed to do so in the past, yet continued to have a relationship with her and allowed her to stay at the home with the children. This court accords deference to the special opportunity of the trial court to judge the credibility of the witnesses. *In re Miller, supra* at 337. The evidence of environmental neglect together with respondent-appellant's continued relationship with the children's mother clearly supports the trial court's conclusion that there was no reasonable likelihood that respondent-appellant would be able to provide proper care and custody for the minor children within a reasonable time. The trial court did not clearly err in so finding.

Finally, the trial court did not clearly err by finding that termination of respondent-appellant's parental rights was not clearly contrary to the best interests of the children. MCL 712A.19b(5). Although respondent-appellant no doubt loves the children, his actions over a long term have not been in their best interests. There was no evidence that termination would be contrary to the best interests of the children.

Affirmed.

/s/ Pat M. Donofrio
/s/ Helene N. White
/s/ Michael J. Talbot